STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED January 11, 2007
v	No. 264707 Oakland Circuit Court
MICHAEL RAYMOND PATTERSON, Defendant-Appellant.	LC No. 2004-198813-FC

Before: Zahra, P.J., and Cavanagh and Schuette, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted on two counts of second-degree murder, MCL 750.317, in the fatal shootings of Carey Christie and Tamara Harris, assault with intent to murder, MCL 750.83, in the shooting of Courtney Harris, and three counts of possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b, in connection with these shootings. Defendant was sentenced to 50 to 90 years' imprisonment for each of the two second-degree murder convictions, two years' imprisonment for each of the three felony-firearm convictions, and 40 to 75 years' imprisonment for the assault with intent to murder conviction. Defendant appeals as of right. We affirm.

I. FACTS

On July 23, 2003, defendant shot Courtney Harris, Tamara Harris, and Carey Christie at the Harris family home. Defendant and Courtney Harris had a tempestuous three-year relationship where they frequently argued, broke-up, and got back together. They also had a son together, Coryan. Defendant spent many nights a week at Courtney's house, even though he formally resided with the Gaiter family around the corner. On the day of the shootings, Courtney and defendant had been arguing throughout the day.

The shootings of Tamara and Christie were fatal. Each had two bullet wounds to the head, one of which was sustained at close range. Courtney had bullet fragments in her right frontal lobe due to the shooting, and her left ring finger was nearly detached. Defendant's friend, 17-year-old Donovan Payne, testified that defendant stated that he was going to kill Courtney. After the shootings, defendant realized that he had done something wrong, and thirty minutes later, he turned himself in at the police station.

II. JURY INSTRUCTIONS

Defendant argues that the trial court's failure to instruct the jury regarding the lesser offense of voluntary manslaughter constituted error. We disagree.

A. Standard of Review

We review preserved claims of instructional error de novo. *People v Lowery*, 258 Mich App 167, 173; 673 NW2d 107 (2003). We also review jury instructions in their entirety to determine whether "they fairly present the issues for trial and sufficiently protect the defendant's rights." *People v McLaughlin*, 258 Mich App 635, 668; 672 NW2d 860 (2003).

B. Analysis

The trial court properly denied defendant's request for an instruction on voluntary manslaughter because a rational view of the evidence did not support an instruction. A criminal defendant has the right to have a properly instructed jury. *People v Rodriguez*, 463 Mich 466, 472; 620 NW2d 13 (2000). "[I]nstructions must include all elements of the crime charged and must not exclude consideration of material issues, defenses, and theories for which there is supporting evidence." *People v Kurr*, 253 Mich App 317, 327; 654 NW2d 651 (2002). A defendant's request for a jury "instruction on a necessarily included lesser offense is proper if the charged greater offense requires the jury to find a disputed factual element that is not part of the lesser included offense and a rational view of the evidence would support it." *People v Cornell*, 466 Mich 335, 357; 646 NW2d 127 (2002). Manslaughter, both voluntary and involuntary, is a lesser included offense of murder. *People v Mendoza*, 468 Mich 527, 540-541; 664 NW2d 685 (2003). "Consequently, when a defendant is charged with murder, an instruction for voluntary . . . manslaughter must be given if supported by a rational view of the evidence." *Id.* at 541.

The element that distinguishes murder from manslaughter is malice. *People v Gillis*, 474 Mich 105, 138; 712 NW2d 419 (2006). To prove voluntary manslaughter, a prosecutor must show that the defendant killed in the heat of passion, that the passion was caused by adequate provocation, and that there was not a lapse of time during which a reasonable person could have controlled his passions. *People v Tierney*, 266 Mich App 687, 714; 703 NW2d 204 (2005). "[P]rovocation is the circumstance that negates the presence of malice." *Mendoza*, *supra* at 536. "The degree of provocation required to mitigate a killing from murder to manslaughter 'is that which causes the defendant to act out of passion rather than reason'" and "'that which would cause a reasonable person to lose control.'" *Tierney*, *supra* at 714-715, quoting *People v Sullivan*, 231 Mich App 510, 518; 586 NW2d 578 (1998), aff'd 461 Mich 992 (2000). But "[n]ot every hot-tempered individual who flies into a rage at the slightest insult can claim manslaughter." *People v Pouncey*, 437 Mich 382, 389; 471 NW2d 346 (1991).

In this case, defendant claims that the existing record supports a voluntary manslaughter instruction because the evidence is sufficient to establish that he may have acted out of passion rather than reason. The shootings arose out of the circumstances surrounding the tumultuous three-year relationship defendant had with Courtney. At the time of the shootings, Courtney was defendant's girlfriend, and she is also the mother of defendant's son, Coryan.

At trial, defendant introduced evidence of his volatile relationship with Courtney. Defendant explained that during the last three years, Courtney had repeatedly called and hung up on him. Courtney stated at trial that on the day of the shootings, she had called defendant to make him angry. At trial, defendant claimed that he considered his relationship with Courtney to be exclusive, but in the past three years, he had witnessed Courtney having sexual relations with other men. According to defendant, this made him feel low and angry. Defendant testified that when he and Courtney had an argument, she would taunt him by saying that Coryan was not his son. Defendant confessed that, long before the shootings occurred, defendant had been involved in an altercation with one of Courtney's male friends, Julius, because defendant felt disrespected when he saw the male friend pick up defendant's son. Defendant stated that he knew about Christie being a male friend of Courtney's because at some time in the past he had found a letter from Christie to Courtney on Courtney's dresser. Defendant said that in the past Courtney had told defendant that Christie was a drug dealer and that Christie would kill defendant. At trial, defendant's sister, Sharea Patterson, testified that sometime after the shootings, Courtney had told her that Courtney felt guilty for having tried to create a fight between Christie and defendant the day of the shootings.

Defendant asserts on appeal that on the day of the shootings, there was already an ongoing fight between him and Courtney that fueled defendant's passions. That morning, sometime before 12:00 p.m., defendant and Courtney argued over money for diapers. Later that day, sometime before 3:00 p.m., defendant and Courtney had a telephone conversation where Courtney threatened to tell the police that defendant had pointed a gun at her face the previous week. Defendant did own a gun that he and Courtney had hidden between the mattress and the wall in Courtney's room. Defendant testified that 30 minutes after this telephone conversation, he returned to Courtney's house to retrieve the gun because he was afraid that Courtney would tell the police that he had a gun. In the meantime, Christie called and although he did not mention that he would stop by, he showed up at Courtney's house about five minutes before defendant.

Defendant contends that he saw Christie holding Coryan. This made defendant feel disrespected and a physical confrontation ensued between the two men. Defendant testified that at that point, he shot Christie, Tamara, and Courtney out of jealousy and rage. Courtney testified that Christie was merely at her house when defendant came over and that Christie went out and sat in the living room, where defendant then shot him.

The trial court correctly ruled that while defendant was jealous and had a volatile relationship with Courtney, the events leading up to the shooting did not constitute adequate provocation for defendant to shoot Christie, Tamara, and Courtney out of the heat of passion. The events that occurred that day were not atypical of defendant and Courtney's three-year relationship. The evidence demonstrates that: they fought frequently; defendant knew that Courtney saw other male friends; and defendant had seen at least one male friend aside from Christie pick up Coryan. Even if these factors angered defendant, they were not of such an extraordinary nature that they would cause a reasonable person to lose control.

Regardless of whether Christie and defendant had a physical confrontation that day, there still was not adequate provocation to justify defendant fatally shooting Tamara and Christie and shooting Courtney three times. Defendant even testified that nothing provoked him to shoot Tamara, other than that he heard a noise and started firing. Again, "[n]ot every hot-tempered

individual who flies into a rage at the slightest insult can claim manslaughter." *Pouncey*, *supra* at 389.

Further, on the day of the shootings, there was a lapse of time during which a reasonable person could have controlled his passions before executing the shootings. At least three hours elapsed between Courtney and defendant's argument over the diapers and when defendant returned to Courtney's house to retrieve his gun. Even if Courtney's threatening phone call had angered defendant, he did not return to her house for 30 minutes.

And even if defendant had a physical confrontation with Christie when he returned to Courtney's house, there was still a lapse of time during which a reasonable person could have controlled his passions. After defendant's confrontation with Christie, defendant had to retrieve the gun from between the mattress and the wall in Courtney's room, walk to where Christie was, cock the trigger, and pull the trigger to release the hammer and fire. Defendant would have had to consciously apply three and three-quarter pounds of pressure to hit the threshold where the gun would fire. Defendant delivered one shot to Christie at close range, while the other shot defendant delivered was with the gun pressed up to Christie's scalp. Defendant did not fire instantaneously or randomly, but deliberately. Defendant had time to consider his target and there was a sufficient lapse of time during which a reasonable person could have controlled his passions before firing.

Defendant also shot Tamara twice and Courtney three times. The Pontiac Police recovered at least 11 cartridges that had been fired from defendant's gun, but defendant's gun held only six bullets. So after defendant fired the first six shots, he reloaded his gun. During this lapse of time—while he reloaded his gun—defendant had time to reflect on his actions, and a reasonable person could have controlled his passions.

Under these circumstances, no reasonable jury could conclude that there was adequate provocation to cause defendant to shoot Christie, Tamara, and Courtney. A reasonable person would not have lost control under these circumstances. Further, there were lapses of time during which a reasonable person could have controlled his passions. Therefore, the trial court did not err by failing to grant defendant's request for a voluntary manslaughter instruction.

III. ADMISSIBILITY OF EVIDENCE

Defendant argues that the trial court denied his constitutional right to present evidence in support of his defense when it excluded evidence of defendant's psychiatric history and medications. We disagree.

A. Standard of Review

We review the trial court's decision whether to admit or exclude evidence for an abuse of discretion. *Tierney*, *supra* at 712. However, we review de novo issues where the admission of evidence involves a preliminary question of law such as whether a rule of evidence or a statute precludes admissibility of the evidence. *Id*. at 712. We also review claims of preserved constitutional error de novo. *People v Geno*, 261 Mich App 624, 627; 683 NW2d 687 (2004).

B. Analysis

The trial court properly excluded evidence of defendant's psychiatric history and medications. The right to present a defense is a constitutional right. *People v Anstey*, 476 Mich 436, 460; 719 NW2d 579 (2006). But, "neither the Confrontation Clause nor due process confers an unlimited right to admit all relevant evidence . . . ." *People v Adamski*, 198 Mich App 133, 138; 497 NW2d 546 (1993). Defendant must still comply with established rules of evidence and procedure. *People v Hayes*, 421 Mich 271, 279; 364 NW2d 635 (1984).

In the past, the diminished capacity defense allowed a defendant, even though legally sane, to offer evidence of mental abnormalities to negate specific intent. *People v Carpenter*, 464 Mich 223, 232; 627 NW2d 276 (2001). However, in *Carpenter*, our Supreme Court recognized that it had never specifically authorized the use of the diminished capacity defense. *Id*. at 233. Rather, the *Carpenter* Court concluded that the Legislature had enacted a comprehensive statutory scheme for asserting a defense based on mental illness and that such scheme precludes evidence of mental abnormalities short of legal insanity to negate specific intent. *Id*. at 226. The *Carpenter* ruling effectively removed diminished capacity as a viable defense. *Tierney*, *supra* at 713, citing *People v Abraham*, 256 Mich App 265, 271 n 2; 662 NW2d 836 (2003).

In reaching its decision, the *Carpenter* Court necessarily addressed the constitutional aspects of precluding a defense based on diminished capacity. *Carpenter*, *supra* at 240-241. The *Carpenter* Court recalled that in *Fisher v United States*, 328 US 463, 470; 66 S Ct 1318; 90 L Ed 1382 (1946), the defendant had requested a jury instruction in his murder trial to permit the jury to "'weigh evidence of his mental deficiencies, which were short of insanity in the legal sense, in determining the fact of and the accused's capacity for premeditation and deliberation.'" *Id*. at 240 (citations omitted). The United States Supreme Court upheld the trial court's denial of such a jury instruction, reasoning that a local trial court's decision to grant or deny a defendant's request for such an instruction is a matter of local concern rather than a matter affected by Constitutional limitations. *Id*. at 240. In light of *Fisher*, the *Carpenter* Court acted within its parameters in ruling that "the insanity defense as established by the Legislature is the sole standard for determining criminal responsibility as it relates to mental illness or retardation." *Id*. at 239. And *Carpenter* is binding precedent on this Court. *Tierney*, *supra* at 713.

In the instant case, defendant argues that the evidence at issue was logically relevant to the question of his guilt because it could negate specific intent. However, regardless of whether such evidence is relevant to defendant's culpability in the crime, the evidence is inadmissible under *Carpenter*. At trial, defendant acknowledged that professional evaluations of his competency and insanity revealed that he has a history of mental illness that falls below the threshold of the insanity defense. The forensic center, as well as defendant's own independent expert, determined that defendant was not insane when the offense occurred on July 23, 2003.

Under *Carpenter*, the insanity defense is the "sole standard for determining criminal responsibility as it relates to mental illness or retardation." *Carpenter*, *supra* at 239. But defendant did not assert an insanity defense, and *Carpenter* required that the trial court exclude evidence of any of defendant's abnormalities that do not reach the level of insanity. Accordingly, the trial court properly denied defendant's request to introduce evidence of defendant's mental deficiencies because they fell below the threshold of insanity.

Defendant argues that under *People v Wilkins*, 184 Mich App 443, 448-451; 459 NW2d 57 (1990), the trial court should have allowed the jury to consider the effects of prescribed medications on defendant's mental condition. But defendant's reliance on *Wilkins* is misplaced. *Wilkins* applies where a defendant asserts a defense of involuntary intoxication. *Id.* at 448-451. Involuntary intoxication, unlike manslaughter, is tested by the same standard as legal insanity. *Id.* Here, defendant is not asserting a defense of involuntary intoxication or legal insanity. Rather, defendant requested an instruction on voluntary manslaughter and desired to present evidence of his medications to establish that he acted out of the heat of passion.

Absent evidence of defendant's medications and psychiatric condition, defendant was still able to present a defense. At trial, defendant introduced evidence regarding his tumultuous relationship with Courtney and the events that fueled his passions on the day of the shootings. The jury convicted defendant of the lesser included offense of second-degree murder. Although second-degree murder, unlike voluntary manslaughter, requires malice, it does not require the first-degree murder elements of willfulness, premeditation or deliberation. MCL 750.317; *People v Bulmer*, 256 Mich App 33, 36-37; 662 NW2d 117 (2003); *People v Bowman*, 254 Mich App 142, 151; 656 NW2d 835 (2002), quoting MCL 750.316(1)(a). In excluding evidence of defendant's psychiatric history and medications, the trial court did not deny defendant his constitutional right to present a defense. Rather, the trial court properly denied defendant the right to present evidence of his diminished capacity to negate specific intent pursuant to *Carpenter*.

Affirmed.

/s/ Brian K. Zahra
/s/ Mark J. Cavanagh
/s/ Bill Schuette